**A** **BILL**

TO AMEND SECTION 27‑40‑120, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXCLUSIONS FROM THE RESIDENTIAL LANDLORD AND TENANT ACT, SO AS TO PROVIDE FOR CERTAIN REMEDIES FOR A SELLER OF A DWELLING UNIT OR PROPERTY CONTAINING A DWELLING UNIT IN CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 27‑40‑710, RELATING TO NONCOMPLIANCE WITH A RENTAL AGREEMENT, SO AS TO ALLOW A SELLER TO RECOVER ACTUAL DAMAGES AND OBTAIN OTHER FORMS OF RELIEF FROM A PURCHASING PARTY WHO OCCUPIES A DWELLING UNIT PRIOR TO THE COMPLETION OF THE SALE AND FAILS TO MAKE PAYMENTS TO THE SELLER.

Whereas, the Residential Landlord Tenant Act does not apply to situations where the purchaser occupies the property as his domicile while the seller maintains the recorded title as security; and

Whereas, this sort of arrangement is common for a purchaser with either poor or no credit history and allows them to purchase a primary residence; and

Whereas, current law requires the seller to file a foreclosure action with the Master‑In‑Equity Court, negatively impacting the purchaser’s ability to purchase a home in the future and clogging the court’s docket; and

Whereas, authorizing the seller to utilize the magistrates court for an eviction action would aid in avoiding some of these negative consequences and unclog the court’s docket. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 27‑40‑120 of the 1976 Code is amended to read:

“Section 27‑40‑120. The following arrangements are not governed by this chapter:

(1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest, except for the remedies provided for in Section 27‑40‑710(D);

(3) occupancy by a member or a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel, motel, or other accommodations subject to the sales tax on accommodations as provided by Section 12‑36‑920;

(5) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

(6) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(7) occupancy under a rental agreement covering the premises used by the occupant primarily for agricultural purposes;

(8) occupancy under a rental agreement in a premises regulated by the provisions of Chapter 32 ~~of~~, Title 27 of the 1976 Code (Vacation Time Sharing Plan Act).

(9) residence, whether temporary or not, at a charitable or emergency protective shelter, public or private.”

SECTION 2. Section 27‑40‑710 of the 1976 Code is amended to read:

“Section 27‑40‑710. (A) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement other than nonpayment of rent or a noncompliance with Section 27‑40‑510 materially affecting health and safety or the physical condition of the property, or Section 27‑40‑540, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen days after receipt of the notice, if the breach is not remedied in fourteen days. The rental agreement terminates as provided in the notice except that:

(1) if the breach is remediable by repairs or otherwise and the tenant adequately remedies the breach before the date specified in the notice, or

(2) if the remedy cannot be completed within fourteen days, but is commenced within the fourteen‑day period and is pursued in good faith to completion within a reasonable time, the rental agreement may not terminate by reason of the breach.

(B) If rent is unpaid when due and the tenant fails to pay rent within five days from the date due or the tenant is in violation of Section 27‑40‑540, the landlord may terminate the rental agreement provided the landlord has given the tenant written notice of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period. The landlord’s obligation to provide notice under this section is satisfied for any lease term after the landlord has given one such notice to the tenant or if the notice is contained in conspicuous language in a written rental agreement. The written notice requirement upon the landlord under this subsection shall be considered to have been complied with if the rental agreement contains the following or a substantially equivalent provision:

‘IF YOU DO NOT PAY YOUR RENT ON TIME

This is your notice. If you do not pay your rent within five days of the due date, the landlord can start to have you evicted. You will get no other notice as long as you live in this rental unit.’

The presence of this provision in the rental agreement fully satisfies the ‘written notice’ requirement under this subsection and applies to a month‑to‑month tenancy following the specified lease term in the original rental agreement. If the rental agreement contains the provision set forth in this subsection, the landlord is not required to furnish any separate or additional written notice to the tenant in order to commence eviction proceedings for nonpayment of rent even after the original term of the rental agreement has expired.

(C) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief, judgments, or evictions in magistrate’s or circuit court without posting bond for any noncompliance by the tenant with the rental agreement or Section 27‑40‑510. A real estate broker‑in‑charge licensed in this State or a licensed property manager, in the conduct of his licensed business may, either in person or through one or more regular employees, complete a form writ of eviction and present facts to judicial officers on behalf of his landlord/principal in support of an action for eviction and/or distress and/or abandonment for which no separate charge is made for this service. If the tenant’s noncompliance is wilful other than nonpayment of rent, the landlord may recover reasonable attorney’s fees, provided the landlord is represented by an attorney. If the tenant’s nonpayment of rent is not in good faith, the landlord is entitled to reasonable attorney’s fees, provided the landlord is represented by an attorney.

(D) A seller under a contract of sale of a dwelling unit or property of which the dwelling unit is a part may recover damages, judgment, or eviction in magistrates court or any combination thereof, from a purchaser who fails to make payments under the contract of sale. The contract of sale may be in the form of a lease if the lease is a financing arrangement for the purchase of the property and is treated as such for income tax purposes. Except for the specific provisions of this subsection, no other provisions of this chapter apply to these situations.

(E) Personal property belonging to a tenant removed from a premises as a result of an eviction proceeding under this chapter which is placed on a public street or highway shall be removed by the appropriate municipal or county officials after a period of forty‑eight hours, excluding Saturdays, Sundays, and holidays, and may also be removed by these officials in the normal course of debris or trash collection before or after a period of forty‑eight hours. If the premises is located in a municipality or county that does not collect trash or debris from the public highways, then after a period of forty‑eight hours, the landlord may remove the personal property from the premises and dispose of it in the manner that trash or debris is normally disposed of in such municipalities or counties. The notice of eviction must clearly inform the tenant of the provisions of this section. The municipality or county and the appropriate officials or employees thereof have no liability in regard to the tenant if he is not informed in the notice of eviction of the provisions of this section.”

SECTION 3. This act takes effect upon approval by the Governor.

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